IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4836 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

ABUBAKAR KASMABHAI PATEL

Appearance:

1. Special Civil Application No. 4836 of 1994

MRS VASAVDATTA BHATT for Petitioner No. 1

MR MUKESH H RATHOD for Respondent No. 1

MR NIRDOSH H RATHOD for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 22/01/2004

ORAL JUDGEMENT

This is a petition filed by the Gujarat State Road Transport Corporation (hereinafter referred to as

"the Corporation") challenging the award made by the Labour Court at Surendranagar in Reference (L.C.S.) No. 317 of 1990 (old No. 1246 of 1989) dated 8th November, 1993, whereby the Labour Court has directed the petitioner Corporation to reinstate the respondent on his original post with continuity of service but without payment of backwages.

2. The record of the petition and in particular the judgment rendered by the Labour Court shows that the respondent was working as a conductor in the Corporation at Surendranagar Depot for the last 12 years from the date of the incident i.e. 7th September, 1986. It is alleged that on that date, while the respondent was on duty on Porbandar route, there was a surprise checking carried out at Goghavadar bus stand and it was found that the respondent had reissued the used tickets and had pocketed the amount received from those passengers to whom such tickets were issued. It was further alleged that such tickets were issued to five passengers and Rs.13=00 were charged from each passengers. The statements of these passengers have been recorded in support of the charge levelled against the respondent.

2.1. In view of the misconduct committed by the respondent, he was served with chargesheet and subsequently departmental inquiry was held against him. In the course of the inquiry, relevant material was placed before the Inquiry Officer by the department and the respondent was given adequate opportunity to defend his interest at the enquiry. At the end of the inquiry, the Inquiry Officer came to the conclusion that the allegation levelled against the respondent was adequately proved by the department and, therefore, report to that effect was submitted to the disciplinary authority. Placing reliance on the finding of the Inquiry Officer, the Divisional Transport Officer vide order dated 26th March, 1987, dismissed the petitioner from service.

2.2. The said order of dismissal was challenged by the respondent before the Labour Court in the aforesaid Reference. Before the Labour Court, it was contended that the allegations levelled against him were not true and they were not supported by any evidence whatsoever. It was further contended that requisite procedure at the time of holding the inquiry was not followed. Not only that, but even before passing the order of dismissal, no adequate opportunity was granted to him to make his submission on the question of imposition of penalty.

2.3. Though during the course of the inquiry, the

respondent gave up the challenge with regard to the validity of the inquiry as well as finding recorded against him by the Inquiry Officer, it appears that during the course of making the final submissions, the finding with regard to the establishment of the guilt of the respondent was again challenged. The Labour Court after considering the material produced before it came to the conclusion that the allegations levelled against the respondent were proved, but considering the fact that during the course of 12 years of service, the respondent had not committed any misconduct or act of malpractice and that the amount alleged to have defalcated by the respondent was quite small, the punishment of dismissal from the service was quite harsh and it is required to be set aside. In view of this, the Labour Court quashed and set aside the order of dismissal and directed the petitioner to reinstate the respondent with continuity of service and to pay costs of Rs.200=00 for the litigation. It however, did not pass any order with regard to the payment of backwages. It is this order which is challenged in this petition by the Corporation. The respondent has remained satisfied with the order of reinstatement only.

3. Mrs.Vasavadatta Bhatt learned advocate appearing for the petitioner has submitted that considering the fact that the respondent had not challenged the validity of the inquiry and even the finding with regard to misconduct, arrived at by the Inquiry Officer, the punishment of dismissal imposed by the competent authority was just and proper and it did not require any interference by the Labour Court. She further submitted that the ground on which the Labour Court has quashed the order of dismissal is not relevant, because it is the nature of the offence which is required to be appreciated and not the amount involved in the offence. She has lastly submitted that the Labour Court ought to have imposed atleast some punishment even while passing the order of reinstatement in favour of the respondent. As against that Mr.M.H. Rathod learned advocate for the respondent has supported the judgment and award of the Labour Court.

4. Considering the record of the petition, as well as the rival submissions, it is clear that the respondent was accused of committing act of defalcation in respect of the bus fare collected on the basis of the used tickets. It is also clear that the tickets were reissued to five passengers and he had collected Rs.13=00 from each passenger. The statements of those persons have also been recorded. However, the Labour Court has

observed that those statements do not conclusively establish the misconduct against the respondent. It has also further taken into consideration the fact that the respondent was in the service of the petitioner for the last 12 years from the date on which the incident took place. During the course of 12 years, no act of misconduct was recorded against him and this appeared to be his first offence. The Labour Court therefore, was of the view that considering the established guilt of the respondent, the quantum of penalty was highly disproportionate and it was required to be reduced. In my opinion, the Labour Court has properly taken into consideration the factors which are relevant for quashing the order of dismissal. When the service record of the respondent till the date the misconduct took place was clean and the amount involved in the said incident was to the extent of Rs.65=00 only, it was incumbent upon the concerned competent authority to take a lenient view and not cause economic death of a person who had been in the employment of the Corporation for over 12 years. It also appears that because the evidence with regard to the alleged misconduct was shaky, the Labour Court has given benefit thereof to the respondent, which cannot be in any way said to be improper, unjust or illegal. In fact when the Labour Court itself had some doubt with regard to the veracity of the statement of those passengers, it ought to have not only quashed the order of dismissal, but ought to have even awarded some backwages. That has however, not been done, may be at the instance of the respondent himself.

In view of the aforesaid, in my opinion, the judgment and award made by the Labour Court are absolutely just and proper and no interference is called for by this Court. In other words, this petition does not have any merit and it is required to be dismissed. Rule is discharged with no order as to costs. Interim relief if any, stands vacated.

[AKSHAY H. MEHTA, J.]

/phalguni/